IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 17393 of 2004

Between:

M/s Resources Technologies Private Limited, rep. by its Managing Director, A.V. Ramana Raju, S/o Subba Raju, aged 47 years, R/o 2-62/1, Kakatiya Nagar, Habsiguda, Ranga Reddy District.

..... PETITIONER

AND

1 Deputy Commissioner (Export Promotion Capital Goods), O/o Commissioner of Customs (Export), Government of India, Ministry of Finance, Department of Revenue, Customs House, Rajaji Salai, Chennai, State of Tamil Nadu.
2 Directorate General of ForeignTrade, Ministry of Commerce and Industry, Department of Commerce, Government of India, Udyog Bhavan, New Delhi.
3 Commissisoner of Exports (Sea Port), Chennai, State of Tamil Nadu.
4 Customs, Excise and Service Tax Appellate Tribunal, rep. by its Registrar, South Zone Bench at Chennai, State of Tamil Nadu.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the 1st respondent relating to the demand for payment of the differential customs duty and penalty for the alleged non-fulfillment of export obligation relating to EPCG License No. P/CG/2100248 dated 21-7-1992, without verification of the same from Directorate General of Foreign Trade, is arbitrary and illegal and direct the respondents to act in accordance with law and forbear from recovering any amount

from the petitioner towards alleged differential customs duty and penalty for the alleged non fulfillment of export obligation of License dated 21-7-1992 and direct the respondents to abide by the sanctioned scheme formulated by the B.I.F.R. in Case. No. 347/98 dated 24-7-2003 and forbear from initiating any action against the petitioner for recovery of the alleged amount and grant such other relief

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondents: Mr. A. Rajasekhara Reddy,

Senior Standing Counsel for Central Goverment

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.NO. 17393 OF 2004

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties and with their consent the writ petition is disposed of at this stage.

An order imposing penalty and differential duty was passed against the petitioner by the competent authority on 23.3.2001,

against which an appeal was taken before the Tribunal. The Tribunal rejected the appeal by an order dt. 17.8.2004. Since the appeal has been dismissed, 1st respondent-Deputy Commissioner passed another proceedings on 6.9.2004 informing the petitioner that since his appeal has been dismissed, he should pay the dues arising out the order dt. 23.3.2001, otherwise the recoveries would be effected. The petitioner is aggrieved of this order and is not aggrieved of the order passed by the Tribunal. Since the Tribunal has passed an order dt. 23.3.2001 which has become final, therefore we do not find any defect in the order dt. 6.9.2004 passed by 1st respondent as well, which is a consequential order.

However Mr. Vedula Venkataramana, learned senior counsel submits that the petitioner-company was before the BIFR, it was declared a sick industry and thereafter a rehabilitation scheme has been framed on 24.6.2003. Under that scheme the dues towards the respondents have also been taken care of and therefore the respondents are bound by the scheme framed under BIFR. This is a matter which can be brought to the notice of the 1st respondent who issued the impugned order dt. 6.9.2004. The matter was pending before the BIFR and the scheme framed by the BIFR was not even considered by the Tribunal. Perhaps the scheme framed by the BIFR was not brought to the notice of the Tribunal.

In these circumstances, we dispose of the writ petition and permit the petitioner to make a representation to the 1st respondent to the effect that the matter has to be settled in terms of the scheme framed by the BIFR. If such a representation is made, the 1st respondent shall consider it and pass appropriate orders. The petitioner may make a representation within a week and the 1st respondent may decide that representation within two weeks thereafter. For a period of three weeks or till the representation is decided whichever is earlier, the coercive steps may not be taken. No further time shall be granted by this Court. No costs.

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BN J.

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SAR J.

Dt.4.10.2004

KR

NB:

Registry to furnish CC of order within three days.

/BO/

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Sd/-

ASST. REGISTRAR

//True Copy//

Section Officer

To

1 Deputy Commissioner (Export Promotion Capital Goods), O/o Commissioner of Customs (Export), Government of India, Ministry of Finance, Department of Revenue, Customs House, Rajaji Salai, Chennai, State of Tamil Nadu.
2 Directorate General of ForeignTrade, Ministry of Commerce and Industry, Department of Commerce, Government of India, Udyog Bhavan, New Delhi.
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